2000

Shawn Henline v. Samuel W. Smith : Brief of Appellant

Utah Supreme Court

Robert Felton; Attorney for Appellant.
Vernon B. Romney; Attorney General; Attorney for Respondent.

IN THE SUPREME COURT OF THE STATE OF UTAH

SHAWN HENLINE,

Plaintiff-Appellant

vs.

SAMUEL W. SMITH, Warden,
Utah State Prison,

Defendant-Respondent.

Case No. 14264

BRIEF OF APPELLANT

Appeal from the denial of Appellant's Petition for a Writ of Habeas Corpus by the Third Distirct Court for Salt Lake County, State of Utah, the Honorable Stewart M. Hanson, presiding.

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The Appellant, Shawn Henline, appeals from a decision of the Third Judicial District Court denying his release from the Utah State Prison upon the petition for a writ of habeas corpus.

DISPOSITION IN THE LOWER COURT

Shawn Henline filed an amended complaint and petition seeking a writ of habeas corpus alleging that his commitment to the Utah State Prison was invalid. The matter came on for hearing on September 4, 1975, before the Honorable Stewart M. Hanson, Sr., who denied the petition.

RELIEF SOUGHT ON APPEAL

The Appellant, Shawn Henline, seeks reversal of the court below with the direction that he be released from the

custody of the respondent upon a writ of habeas corpus or, in the alternative, this matter be remanded with directions to the District Court that the Appellant be resentenced after a proper determination of the degree of the offense to which the Appellant entered a guilty plea.

STATEMENT OF FACTS

On January 9, 1974, the Appellant entered a plea to the offense of theft as defined by Section 76-6-412, Utah Code Annotated (1953 as amended) before Marcellus K. Snow, judge of the Third Judicial District Court in Case Number 25559. On May 2, 1974, judgment was rendered from the Third District Court in Salt Lake County and sentence was issued thereunder on the 3rd day of May, 1974, committing the Appellant to the Utah State Prison "for the indeterminate term as provided by law for the crime of attempted theft (third degree)". On June 13, 1975, the Appellant filed a complaint and petition seeking a writ of habeas corpus in the District Court on the basis that the restraint of the Appellant was unlawful on the following bases:

a) No determination was ever made by the Court as to the value of the property taken by the Appellant pursuant to the requirements of Section 76-6-412, Utah Code Annotated (1953 as amended).

b) The Court below erred in finding that Appellant entered his guilty plea voluntarily and the Court abused its

discretion in failing to allow the petitioner to withdraw his plea of guilty prior to sentencing.

The transcript of the arraignment on January 9, 1974, which was filed as a supplemental record on January 14, 1976, will be referred to as "T.A.". The transcript of the sentencing on May 2, 1974, will be referred to as "T.S." and the Sentence will be referred to as "S.".

ARGUMENT

POINT I

THE COURT ERRED IN FAILING TO DETERMINE THE VALUE OF THE PROPERTY TAKEN AND THE DEGREE OF THE OFFENSE PURSUANT TO THE REQUIREMENTS OF SECTION 76-6-412, UTAH CODE ANNOTATED (1953 AS AMENDED).

Appellant contends the failure of the Court to make a determination as to the value of the property taken on entry of a plea of guilty to the offense of attempted theft renders Appellant's plea and subsequent sentence invalid. No determination was ever made by the Court as to the value of the property allegedly taken by the Appellant contrary to the requirements of Section 76-6-412, Utah Code Annotated (1953 as amended).

It is clear from the transcript of January 9, 1974, that your Appellant entered a plea of guilty to the offense of attempted theft. On page 5 of the transcript of January 9, 1974, at line 8 (Supplemental Record), a discussion ensued between the Court and the County Attorney and the Appellant

regarding the charge to which the Appellant is entering a plea:

> Therefore, what, then, is your plea to the lesser, included offense of theft of property from a person (Court)
>
> MR. HYDE: Attempted theft of property.
>
> THE COURT: Excuse me, attempted theft.
>
> MR. HYDE: He asked you.
>
> THE COURT: What is your plea?
>
> MR. HENLINE: Guilty.
>
> THE COURT: A plea of guilty may be entered.

The Court at no time in the proceedings inquired into or determined the value of the property and was therefore unable to determine the classification of the offense of theft pursuant to the terms of Section 76-6-412, Utah Code Annotated (1953 as amended). The Court, further, failed to determine the degree of offense pursuant to Section 77-24-9, Utah Code Annotated (1953 as amended):

> Where an information or indictment charged an offense which is divided into degrees without specifying degrees, if the defendant pleads guilty, generally the Court shall, before accepting a plea, examine witnesses to determine the degree of the offense of which the defendant is guilty.

Even though there is a discussion within the transcript of January 9, 1974, regarding the entry of the Appellant's plea, it is abundantly clear that the crime to which the petitioner actually entered a plea of guilty was not "attempted

theft of property from a person" but was instead, attempted theft (T.A., page 5, line 8 and T.S.). Attempted theft of property may be classified as anything from a Class B misdemeanor to a third-degree felony depending solely upon the value of the property taken. The Court failed to determine that value and therefore your Appellant is currently incarcerated in the Utah State Prison pursuant to an improper sentence. This matter should be remanded back to the District Court for imposition of a correct sentence after a proper determination is made of the value of the property and the degree of offense involved. Belt v. Turner, 25 U.2d 230, 479 P.2d 791 (1971).

POINT II

THE GUILTY PLEA ENTERED BY THE APPELLANT ON JANUARY 9, 1974, WAS COERCED; AND WAS INVOLUNTARILY ENTERED BASED UPON FALSE AND MISLEADING INFORMATION BEING GIVEN TO THE APPELLANT. THE COURT ABUSED ITS DISCRETION BY NOT ALLOWING THE APPELLANT TO WITHDRAW HIS PLEA OF GUILTY.

During the arraignment and all prior proceedings up and until the entry of the plea by the Appellant on January 9, 1974, the Appellant steadfastly had asserted his innocence to all the charges pending before the court (T.A., T.S.). Prior to the arraignment on January 9, 1974, the petitioner was approached by Mr. Lynn Brown who had been appointed to represent him with the proposal that if he entered a plea of guilty to attempted theft on Criminal Case Number 25559, the

County Attorney's Office would reduce the charges pending to attempted theft and dismiss another charge pending in a different action. Defense counsel did then tell the Appellant how to answer certain questions which would be put to him before the judge on January 9, 1974, and on advice of counsel, Appellant submitted the appropriate answers even though he did not understand the nature of the proceedings and, in fact, the answers were incorrect due to defense counsel's representations.

The record amply demonstrates that the Appellant not only misunderstood the nature of the proceedings of January 9, 1974, but was coerced by undue influence to enter the guilty plea against his will. At the January 9th hearing, upon questioning from his attorney, the Appellant's response as to whether or not he wishes to withdraw his guilty plea was: "Yes, I will take it to trial". (T.A., page 7, line 8). The Court then interjected its opinion upon the Appellant regarding the purported plea bargaining arrangement, stating: "There is no difference. The case is going to be dismissed". (T.A., page 7, line 10). The Appellant was confused and the entry of the guilty plea by him was contrary to the truth and contrary to his actual wishes. He was, in fact, being induced to enter a plea in this action because of exterior pressures from the County Attorney, his attorney, and the Court. It is illustrative of the confusion which

was caused by the actions of the Court and the respective attorneys at the Appellant's arraignment when, in fact, counsel for the Appellant stated to him: "It will be dismissed on the sentencing on the other deal". (T.A., page 7, line 20). It is blatantly obvious that Mr. Henline did not understand both the nature of the act which he was being urged to do nor the explanations which were being given to him. The "it" and the "other deal" both referred to another pending charge, number 26201, yet Mr. Henline's counsel told him he would be sentenced under that pending charge but at the same time that charge would be dismissed.

It is well established that the entry of a plea of guilty is substantially more than an admission of doing specified conduct. It constitutes, in fact, a conviction to the crime for which the plea was entered and ignorance or incomprehension on the part of the defendant acts to deprive the defendant of constitutionally protected rights. Boykin v. Alabama, 395 U.S. 238 (1969). Mr. Henline was instructed not to respond correctly to questions put to him by his attorney pursuant to the requirements of Boykin, supra. In the transcript of January 9, 1974, pages 2-5, Mr. Brown asks the Appellant questions relative to his plea. The script clearly reveals Mr. Henline was instructed to incorrectly answer certain questions put to him.

> MR. BROWN: Has anyone made any promises to you as to what the sentence would be if you pled guilty to this charge?

MR. HENLINE: No.

MR. BROWN: Has anyone made any threats or in any way made promises to induce you to plead guilty to this charge?

MR. HENLINE: No. (T.A., page 4).

It is conceded throughout the record in this matter that, in fact, a plea bargaining arrangement had been arrived at which did induce Mr. Henline to enter his plea. However, after the entry of the plea, Mr. Henline then discovered the plea was to "attempted theft" as stated by Mr. Hyde and the Court (T.A., page 5, line 8) but the sentencing was for the offense of "attempted theft of property from a person", a third degree felony. It is indicative of the coercive circumstances surrounding the entry of the Appellant's plea that while he is entering a plea to one degree of an offense, he is being sentenced on a more severe degree of that offense.

The mere fact that a defendant, against whom there are multiple charges pending, pleads guilty to one of them on a condition that the other be dropped does not, in and of itself, compel a finding of coercion. This Court in Strong v. Turner, 22 U.2d 294, 452 P.2d 323 (1969), stated that the record must justify a conclusion that a defendant's decision to enter a guilty plea was not arrived at rationally. Such is the case in this action. There is ample evidence in the record that the Appellant did not understand or rationally weigh the choices because of misleading and confusing information which was being given to him by those vested with the

responsibility of protecting his interests as well as the interests of society.

The standard as to the voluntariness of guilty pleas, according to the Court in Brady v. United States, 397 U.S. 742 (1970), at page 755, is essentially that defined by Judge Tuttle of the Fifth Circuit Court of Appeals in Shelton v. United States, 246 F.2d 571 (1957), at page 115:

> A plea of guilty as entered by one fully aware of the direct consequences, including natural value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promise to discontinue improper harassment), misrepresentation . . .

Appellant contends he was not aware of the direct consequences of his guilty plea in that he was instructed to answer questions presented to him before the court incorrectly; he was misled as to the degree of the offense to which he was entering the plea; he was told that the other charge which was supposed to be dismissed was the charge on which he would be sentenced; and he was misled as to when the other charge would be dismissed contrary to his agreement and understanding with the County Attorney (T.A., page 6, line 20 to page 7, line 20). It is submitted that the composite of these irregularities in the proceedings at the time Mr. Henline entered a plea of guilty was severe and had an effect of confusing the defendant and coercing him, whether intentionally or unintentionally, into entering

a plea against his will.

Pursuant to the terms of Section 77-24-3, Utah Code Annotated (1953 as amended), the Court is vested with the discretion to allow a defendant to withdraw a plea of guilty. In State v. Plum, 14 U.2d 124, 378 P.2d 671 (1963), this Court prescribed that withdrawal of a guilty plea after sentencing is within the sound discretion of the trial court. As this Court stated in Plum, supra, one cannot attempt to withdraw his plea merely because he disagrees with the sentence imposed by the court. But in this action, Mr. Henline moved to withdraw his plea of guilty prior to the time of sentencing (T.S., pages 2,3). This was not a case of remorse because of the severity of the sentence but, rather, an attempt by the Appellant to rectify a plea entered under coercive circumstances which he did not understand. At this point in time, there can be no prejudice to the State and the totality of the circumstances set forth in the record of the Appellant's arraignment on January 9, 1974, and his sentencing on May 2, 1974, clearly reflect a concerted effort by the Court, the County Attorney, and the attorney for the Appellant to override the will of the Appellant and induce him to enter a plea of guilty. The sum total effect of the misleading and confusing information given to the defendant by all the parties involved and the total lack of any prejudice to the State, and the Appellant's attempt to rectify his misunderstanding

by requesting the Court to allow him to withdraw his plea of guilty, present sufficient facts to support Appellant's claim that, unlike the issues before this court in State v. Plum, 14 U.2d 124, 328 P.2d 671 (1963), the trial court erred and abused its discretion in not allowing the Appellant to withdraw his plea of guilty and proceed to trial.

CONCLUSION

On the basis of the cases and statutes cited and the circumstances in this action, it is concluded that the Appellant should have been granted a writ of habeas corpus or, in the alternative, that the Appellant should have been resentenced after a proper determination of the degree of the offense to which he entered his plea was arrived at by the Court.

Respectfully submitted,

Robert Felton

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